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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PETER L., **Petitioner,** **v.** **SUPERIOR COURT OF SONOMA COUNTY,** **Respondent;** **SONOMA COUNTY HUMAN SERVICES DEPARTMENT,** **Real Party in Interest.**	**A108828** **(Sonoma County Super. Ct. Nos. 1855-DEP & 1856-DEP)**

Peter L., Jr., born May 1998, and Brieanna L., born April 2001, were made dependents of the Sonoma County Juvenile Court in March 2004. (Welf. & Inst. Code,[1] § 300.) Pursuant to rule 38.1 of the California Rules of Court,[2] the minors' father, petitioner Peter L. (Father), has filed a petition for extraordinary writ seeking review of orders terminating reunification services and setting a March 3, 2005 hearing to select and implement a permanent plan under section 366.26 (hereafter .26-hearing). He contends the trial court erred in failing to order reunification services be provided to him for Peter, Jr., and Brieanna because Father is a non-offending parent and there is no clear

1 All undesignated section references are to the Welfare and Institutions Code.

2 All rule references are to the California Rules of Court.

and convincing evidence that it was in the best interests of these minors for him not to receive reunification services.[3] He requests an order that reunification services be provided to him and the hearing on the permanent plan be stayed. We dismiss the petition because Father failed to timely appeal from the disposition order denying reunification services to him and is therefore barred from challenging the denial of such services.

BACKGROUND

On March 1, 2004, section 300 petitions were filed under subdivision (b) alleging the minors' mother, Shauna B. (Mother), had failed to supervise or protect them adequately, failed to provide them with adequate food, clothing, shelter, or medical treatment, and was unable to provide for their regular care due to Mother's substance abuse. The petitions asserted factual allegations claiming, among other things, that Mother had a history of substance abuse involving marijuana, cocaine, methamphetamine and heroin, that Brieanna had been exposed to Mother being the victim of domestic violence, and that Mother had left the minors without adult supervision, without adequate food and clothing, and in an unclean and unsafe home environment. The petitions made no allegations against Father. At a detention hearing held the next day, the court ordered the minors detained.

Proof of service records reflect that on March 22, 2004, HSD prepared and mailed to Father in Nashua, New Hampshire, a copy of the Jurisdiction/Disposition Report (report) dated the same date. The report included a welfare history recounting a New Hampshire referral that had alleged drug use by both parents, drug paraphernalia in the home, and domestic violence. According to the report, Father was arrested, Mother went into residential drug treatment, and the minors were cared for by their maternal

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[3] Peter, Jr., and Brieanna have a sibling, Christian L., born July 1994, who is also a subject of the section 300 petitions filed in the trial court. Upon their detention, Christian, who had been designated as severely emotionally disturbed, was placed by Sonoma County Human Services Department (HSD) at the Valley of the Moon

grandmother. The report stated that Mother left drug treatment with an "open case" and moved to Sonoma County, taking the minors with her.

The report noted that "[l]ittle is known about [Father's] circumstances." HSD had two Nashua, New Hampshire addresses for Father, and sent notice of the proceedings to both addresses, but that only one of the notices came back as "attempted—unknown." The report stated that the social worker called the phone number obtained for Father in New Hampshire and left a message, but had not heard back from him. When the social worker called Father's mother (Patricia I.) in New Hampshire, Patricia I. became agitated, shouted "[Father] doesn't live here!," and hung up the telephone. Mother told the social worker that Father was deceased, but the social worker was unable to verify it. HSD was stymied in efforts to run criminal record checks on Father in California and in New Hampshire. The report recommended the court find that Father "has voluntarily absented himself."

The hearing on the petitions went forward on March 24, 2004. Neither parent appeared at the hearing. The HSD attorney informed the court that HSD had tried to inform Father of the proceedings as best they could. With regard to Father, the court found that he had voluntarily absented himself from the proceedings and would not be provided with reunification services. The court concluded "it would not benefit the children or be in the children's best interests for [Father] to receive reunification services. And [Father] is not entitled to reunification services, as the court finds that [Father] is not requesting custody of the minors."

On April 21, 2004, the court "Received" but did not file, a letter from Father that stated, in pertinent part: "I would like an attorney to see the court on my behalf so I may get my children back. Me and my mother are the only ones who took care of them, and would like them returned home. [¶] Please let us know the best way to go about this."

The following day, the court appointed counsel to represent Father.

Children's Center, while Peter, Jr., and Brieanna were placed in a foster home. Christian is *not* the subject of Father's petition for extraordinary writ before this court.

Six-Month Review Report

HSD's six-month status review report, filed November 5, 2004, noted that there had been telephone contact with Father in New Hampshire, and that he has hepatitis but is in good health. Father reported that he works in construction and rents an apartment, but that he usually lives in hotels near the construction sites he works at. He often travels for work to various areas of New Hampshire, and sometimes to other states. He prefers to use his mother's post office box for mail and her telephone number (because he does not have one). According to the social worker, he expressed an interest in having the children returned to his care but had not contacted the social worker for several weeks prior to preparation of the report. In July 2004, the social worker sent Father a New Hampshire criminal record release authorization for him to complete and return, but Father has not responded to the request.

Six-Month Review Hearing

At a November 5, 2004 six-month review hearing, Mother attended but Father did not. Father was represented at the hearing by counsel, who noted that Father had not been offered reunification services from the outset. The court terminated services as to Mother and set the matter for a March 3, 2005 .26-hearing to select and implement a permanent plan for Peter, Jr., and Brieanna.[4]

DISCUSSION

I. *Timeliness of the Intent to File Writ Petition*

HSD argues that Father is not entitled to extraordinary relief because his notice of intent to file this writ petition was untimely. The record reveals the juvenile court rendered its decision on November 5, 2004, terminating reunification services as to Mother and setting the March 3, 2005 .26-hearing to select and implement a permanent plan for the minors. Although Father did not attend the hearing, his counsel was present and confirmed Father's proper mailing address in Nashua, New Hampshire. That same

[4] The court set March 17, 2005, as the date for the permanency planning hearing regarding Christian.

day, according to proofs of service in the record, the court mailed Father the forms he would need to file a notice of intent to file writ petition.

HSD argues that Father's notice of intent to file a rule 38.1 writ petition was due 12 days thereafter. (Former rule 39.1B, subd. (f), repealed eff. Jan. 1, 2005 [seven-day filing deadline plus statutory five days' mailing time for in-state recipients pursuant to Code Civ. Proc., § 1013, subd. (a)].) Father's notice of intent was not filed until December 1, 2004, more than three weeks after the November 5, 2004 order setting the .26-hearing.

Although the time limit for filing the notice of intent is mandatory (*Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, 1830-1831; *Roxanne H. v. Superior Court* (1995) 35 Cal.App.4th 1008, 1010) and review may be barred for even minor lapses in timeliness (*Jonathan M.*, at pp. 1828-1829 [notice of intent to file writ petition filed one day late]; *Roxanne H.*, at p. 1011 [petition filed three days late]), a petitioner may obtain relief from default for good cause shown (*Jonathan M.*, at p. 1831). Here, Father has offered no explanation for waiting until December 1, 2004, to file the notice of intent.

We need not decide HSD's timeliness challenge to the notice of intent or seek an explanation from Father concerning the matter because, as explained below, Father failed to timely appeal from the March 24, 2004 disposition order denying reunification services to him and is therefore barred from challenging the denial of such services.

II. *Writ Relief Inappropriate From Appealable Order Denying Reunification Services*

The juvenile court declined to provide reunification services to Father as part of its March 24, 2004 disposition order. In juvenile dependency matters, all orders starting with the disposition order are appealable judgments except for the order setting a .26-hearing, which is governed by the writ procedures described in rules 38 and 38.1. (§ 366.26, subd. (*l*); *Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1395.) *Wanda B.*, specifically determined that an order denying reunification services, unaccompanied by a simultaneous order setting a .26-hearing is immediately appealable. (*Id.* at p. 1394.)

Father contacted the juvenile court by letter received April 21, 2004, and the court appointed counsel for Father the next day. The time for filing an appeal from the March 24, 2004 disposition order would not have expired until 60 days after it had been rendered, whereupon it became final and nonappealable. (Rule 37(d).) Hence, Father had ample time (more than 30 days) to file an appeal through his counsel of the order denying him reunification services, if Father had diligently sought to do so.

" ' "If an order is appealable . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata" ' " (*Wanda B., supra*, 41 Cal.App.4th at p. 1396), and may not be challenged in appeals from orders issued later in the course of the dependency proceedings (*Ibid.*; *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563). "Appellate jurisdiction to review an appealable order depends upon a timely notice of appeal. [Citation.]" (*Wanda B.*, at p. 1396.)

Father did not appeal from the March 24, 2004 disposition order denying him reunification services, and it is already a final judgment. Hence, we lack jurisdiction to consider his challenges to the lower court's determinations not to provide those services to him.[5]

DISPOSITION

Father's petition for extraordinary writ review is dismissed and the order to show cause is discharged. (Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 38.1(h); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Father is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (*l*).) Because the .26-hearing is set for March 3, 2005, our decision is final as to this court immediately. (Rule 24(b)(3).) The request for stay is denied.

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5 Father cites *In re Janee J.* (1999) 74 Cal.App.4th 198, 208 for the proposition that the right to due process limits an appellate court's power to impose this rule of appellate review. Assuming, without deciding that this is an accurate statement of the law, Father sets out no basis for finding a due process violation in the factual context of this case.

SIMONS, J.

We concur.

STEVENS, Acting P.J.

GEMELLO, J.